

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

MELVIN ELLIS HOLLY,)
)
Petitioner,)
)
-vs-) Case Nos. CIV-08-404-F
) CR-04-114-F
UNITED STATES OF AMERICA,)
)
Respondent.)

O R D E R

On September 28, 2009, petitioner, Melvin Ellis Holly, filed his Notice of Appeal (doc. no. 37), indicating his intent to appeal from this court's orders, entered on September 17, 2009 (doc. nos. 34 and 35), denying his Amended Motion to Disqualify and denying his Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody Pursuant to 28 U.S.C. § 2255. The court also entered Judgment denying the section 2255 motion on September 17, 2009 (doc. no. 36).

In his notice, petitioner also requests leave to proceed *in forma pauperis* on appeal (doc. no. 38).

Pursuant to 28 U.S.C. § 2253(c)(1)(B), petitioner is required to obtain a certificate of appealability before appealing a final order in a section 2255 proceeding. Section 2253(c)(2) and Section 2253(c)(3) instruct that the court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right,” and the court “indicate[s] which specific issue or issues satisfy [that] showing.” 28 U.S.C. § 2253(c)(2) and § 2253(c)(3). Petitioner can satisfy that standard by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. Slack v. McDaniel, 529 U.S. 473, 484 (2000) (citing Barefoot

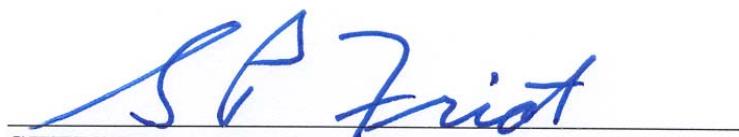
v. Estelle, 463 U.S. 880, 893 (1983)). After considering the record in this case, the court concludes that a certificate of appealability should not issue as petitioner cannot satisfy the required showing. The record is devoid of any authority suggesting that the Tenth Circuit Court of Appeals would resolve the issues in this case differently. The court therefore concludes that a certificate of appealability should be denied.

As stated, petitioner requests leave to proceed *in forma pauperis* on appeal. Under 28 U.S.C. § 1915(a)(1), a court may authorize an appeal “without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets [such person] possesses that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). The affidavit shall also “state the nature of the . . . appeal and affiant’s belief that the person is entitled to redress.” *Id.* Although petitioner has made a request for leave to proceed *in forma pauperis*, petitioner has not submitted an affidavit in compliance with § 1915(a)(1). The court therefore concludes that petitioner’s request for leave to proceed *in forma pauperis* should be denied.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. A certificate of appealability is **DENIED**.
2. Petitioner’s request to proceed *in forma pauperis* (doc. no. 38) is **DENIED**.
3. The clerk is directed to send a copy of this order to the Tenth Circuit Court of Appeals.

Entered this 29th day of September, 2009.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE